

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NORTHEASTERN DIVISION**

<b>DAVID CHRISTIAN, et. al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>Case No. 2:11cv0082</b>
	)	
<b>v.</b>	)	
	)	
<b>SWALLOWS PRODUCE, INC. and</b>	)	<b>Judge Sharp</b>
<b>JACKY R. SWALLOWS,</b>	)	
	)	<b>Magistrate Judge Brown</b>
<b>Defendants,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>SWALLOWS PRODUCE, INC. and</b>	)	
<b>JACKY R. SWALLOWS,</b>	)	
	)	
<b>Third-Party Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>TWO BROTHERS FARM OF</b>	)	
<b>GEORGIA, INC., a/k/a TWO</b>	)	
<b>BROTHERS FARM, INC. and MICHEL</b>	)	
<b>D. GERMAIN,</b>	)	
	)	
<b>Third-Party Defendants.</b>		

**SWALLOWS PRODUCE, INC. AND JACKY R. SWALLOWS' MEMORANDUM OF  
LAW IN SUPPORT OF THEIR MOTION FOR LEAVE TO FILE THIRD-PARTY  
COMPLAINT**

Defendants/Third-Party Plaintiffs, Swallows Produce, Inc. ("Swallows Produce") and Jacky R. Swallows ("Swallows") file this Memorandum of Law in Support of Their Motion for Leave to File a Third-Party Complaint against Third-Party Defendants Two Brothers Farm of Georgia, Inc. a/k/a Two Brothers Farm, Inc. ("Two Brothers Farm") and Michel D. Germain ("Germain") pursuant to Federal Rule 14(a), and respectfully show the Court as follows:

## **FACTS**

1. Plaintiffs file a Complaint against Swallows Produce and Swallows on August 9, 2011 alleging that Swallows Produce and Swallows violated the Migrant Seasonal Agricultural Worker Protection Act and the Fair Labor Standards Act. (Doc. 1, Complaint).

2. Swallows Produce and Swallows filed their Answer to Plaintiffs' Complaint on October 7, 2011. (Doc. 14, Answer).

3. More than ten (10) days have elapsed since Swallows Produce and Swallows filed their Answer to Plaintiffs' complaint, thereby necessitating this motion for leave of Court to file a Third-Party Complaint in this action.

4. The Court set a deadline for moving to join additional plaintiffs and to amend the pleadings on January 17, 2012. (Doc. 13, Case Management Order).

5. This Motion is filed within the Court's deadline for the joinder of parties and amendment of pleadings.

6. Swallows Produce and Swallows' proposed Third-Party Complaint against Two Brothers Farm and Germain is attached to the Motion as Exhibit A and is incorporated by reference.

7. Swallows Produce and Two Brothers Farm entered into farm labor agreements in 2009 and 2010 whereby Two Brothers Farm agreed to serve as a farm labor contractor and employ workers to perform agricultural services on Swallows Produce's farm.

8. These agreements provided that Two Brothers Farm was the sole employer of any such workers.

9. The 2010 farm labor agreement contains an indemnification clause that obligates Two Brothers Farm to indemnify and hold harmless Swallows Produce from Plaintiffs' claims in

this lawsuit.

### **ARGUMENT AND AUTHORITIES**

Federal Rule of Civil Procedure 14(a) permits a defendant to cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claims against the third-party plaintiff. While granting of such motion is discretionary with the Court, the purpose of the rule is to avoid a multiplicity of actions and resolution of matters having common questions of fact or law to be resolved in one proceeding.

As stated in Swallows Produce and Swallows' Third Party Complaint, although Swallows Produce does not believe and has been presented with no evidence that any of the Plaintiffs performed the services alleged, if any of Plaintiffs' allegations in their Complaint are to be found true, Swallows Produce and Swallows are entitled to bring a claim for breach of contract and indemnification against Two Brothers Farm and Germain, as the aforementioned conduct, if found true and correct, violated their duties to Swallows Produce. Additionally, to the extent that Two Brothers Farm violated the Migrant and Seasonal Agricultural Worker Protection Act and/or the Fair Labor Standards Act in its employment of Plaintiffs, Two Brothers Farm is solely liable to Plaintiffs for such violations. As a result of the allegations against Swallows Produce and Swallows, Swallows Produce and Swallows assert that Two Brothers Farm and Germain are liable to Swallows Produce and Swallows for their actions that stem from the same set facts in the underlying, above-captioned action. Because Two Brothers Farm and Germain will be liable to Swallows Produce and Swallows for all of part of Plaintiffs' claims against Swallows Produce and Swallows, Two Brothers Farm and Germain may properly be joined to this lawsuit.

### **CONCLUSION**

For the foregoing reasons, Swallows Produce and Swallows respectfully request that the

Court grant their Motion and file their Third-Party Complaint against Two Brothers Farm and Germain.

Respectfully submitted,

/s/ C. Eric Stevens

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C. Eric Stevens (#010632)  
Rachel K. Ross (#27501)  
LITTLER MENDELSON, P.C.  
3200 West End Avenue  
Suite 500  
Nashville, TN 37203  
Telephone: 615.383.3033  
Facsimile: 615.383.3323  
[estevens@littler.com](mailto:estevens@littler.com)  
[ross@littler.com](mailto:ross@littler.com)

*Attorneys for Defendants/Third-Party Plaintiffs  
Swallows Produce, Inc. and Jacky R. Swallows*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing has been served via the Court's ECF Mail System upon the following:

Melody Fowler-Green  
Southern Migrant Legal Services  
311 Plus Park Blvd. Ste 135  
Nashville, TN 37217  
Phone: 615-750-1200  
Fax: 615-366-3349  
[mfgreen@trla.org](mailto:mfgreen@trla.org)

Gregory S. Schell  
Migrant Farmworker Justice Project  
508 Lucerne Avenue  
Lake Worth, FL 33460-3819  
Phone: 561-582-3921  
Fax: 561-582-4881  
[Greg@Floridalegal.org](mailto:Greg@Floridalegal.org)

on this the 17th day of January, 2012.

/s/ C. Eric Stevens

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C. Eric Stevens

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